

Criminalization of Marital Rape in India: Legal Analysis

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Abstract

Marital rape is an evil practice in India. Domestic violence is not less or part of violence. Usually, victims of domestic violence are married women. The biggest threat to gender justice in India. Domestic violence has been around for centuries, but in the past women were not considered independent legal entities that could speak out or feel that what happened to them was wrong. Since then, domestic violence is not considered rape by Indian society. This is rarely resisted in society for various reasons. Domestic violence refers to violence perpetrated by the victim's partner. In the past, girls always thought that what their husband did was right, so they didn't think it was wrong or unfair. Indian lawmakers have been silent on the issue so far. The legislature of India has been given the most difficult task of enacting laws under the constitution of India for the safety, security and development of the country. But the legislature is not very interested in eradicating the crime of domestic violence from the community. So, in order to know more about marriage, let's learn its meaning and historical background and how the laws of different countries treat the human rights of marriage.

Keywords: Marital rape, history, India and domestic violence.

Introduction

India, as a patriarchal society, has always valued men above women and has always subordinated them to men. Women are not allowed to make decisions or participate, whether they are affected by the decision or not. They served as servants and did household work. They had to do what their husbands told them to do. Men were the only breadwinners and therefore earned more respect in society and were considered superior to women. Sati pratha prevailed before 1829, where the widow burned her husband's pyre. Women suffer for a long time and go through a lot of confusion. There is an old saying: "Aurat, aadmi ke paio ki jooti hai." It doesn't matter how many men decide that they must obey women and that husbands can disrespect their wives. Many gender differences lead to violence against women. As society modernizes and develops, people's worldviews change and the differences between the two sexes diminish. Many social activists devote their lives to the advancement of women so that they can survive in their own circumstances. Women often do not complain about their husbands and their laws because from the beginning they learn to respect their husbands and in-laws and save their marriages as much as possible. Patriarchy makes women inferior and weak, women learn to be evil against society. When something goes wrong, whether it's rape, society blames women.

This can be called figuratively as forced arrest. In addition, violence against women without their consent or will, consent, or coercion, deception, fear, or physical knowledge of women can be said

cruelty. Arranged marriage is not a modern term; entered into force from the date of marriage between a man and a woman. Before that, in a society dominated by men, women did not have the right to protect their dignity and integrity, and were considered objects to satisfy men's sexual desires. This theory is even considered and practiced in many parts of the country where consanguineous marriage has not been criminalized. India is on the list of countries that have not filed a criminal case. India is one of them, a few years after several other countries passed the Criminal Code criminalizing rape; the concept of domestic violence is brought into the picture.

Literature review

Basel, K.C. (1999). Accepting rape: How women "give in" to having sex with their husbands. Violence against women.

Although it draws on the conceptual advances of earlier theorists, this article goes beyond their work in three important respects. First, it uses ecological methods as a heuristic tool to organize existing research into a holistic understanding. Although other theorists have proposed this framework as a way to think about violence, few have attempted to examine factors that predict violence at different levels of leadership. Second, the article combines findings from international and crosscultural studies with findings from North American social science studies. Finally, the framework brings together findings on all forms of physical and sexual violence against women to promote better ways to address violence against women.

Martin, E.K. Analysis of marriage. Crime and Behavior, 12(3), 329–347.

Adultery is not considered a crime; until recently it was illegal in all 50 states. Marriage is an important social issue; 10 to 14 percent of married women and 40 to 50 percent of women experience a crisis. In marriages where marital rape occurs, sexual violence and marital dissatisfaction rates are higher and marital satisfaction scores are lower. Victims of marital violence often have it used against them. But most victims of marital violence are unable or unwilling to protect their husbands' sexual desires. Victims of intimate partner violence suffer from post-traumatic stress disorder (PTSD), depression, gynecological problems, and negative physical symptoms. Victims of spousal abuse seek help from many sources. Seeking help from social and legal services may seem like the best way to end the marriage. Stress and cognitive therapy are effective treatments for marital abuse victims

According to Bertrand Russell (see "Feminist Criticism in the Nineteenth Century" above),¹ it was not until the 1970s that this issue was raised at the political level. The 1970s also saw the passage of the Crimes (Amendment) Act 1976, which provided the first legal definition of rape (previously rape had been defined by statute). In its Sexual Crimes Report prepared in 1984, the Crime Commission rejected the idea that the crime of rape should be extended to include sexual intercourse. write these words: "Most of us... do not think that rape can be viewed in the abstract as merely 'unconsented sexual intercourse.' These actions are out of the question if the couple lives together and the woman has sexual intercourse without her consent. It appears that they had sex regularly before the behavior in question occurred, and only occasionally uncomfortable sexual intercourse was recommended, as sexual intercourse could be associated with sex. If the man goes one step further and forces her to have sex

¹ Feminist Criticism in the Nineteenth Century

without her consent, this may be a sign that the relationship is not working. But this is far from the "special" and "serious" sin described above. If the husband causes harm, he can be accused of various crimes, but the main consequence of the husband's actions is the injury, not the forced sex. Although there has been a lot of information about the subject of marriage in the last twenty years, information in this area is still scarce. This article provides an overview of the current state of marital status. First, the long history of legal, cultural, and illegal employment of marital violence victims and their poor medical outcomes is discussed. Second, research on marriage is reviewed, including descriptive, descriptive, and comparative studies. This review highlights the effects of marital status and the severity of post-traumatic stress disorder, as well as the limitations of existing research. Finally, treatment barriers and recommendations for professionals are discussed. Published five times a year, peer-reviewed, Trauma, Violence, and Abuse (TVA) is a peer-reviewed journal dedicated to organizing, synthesizing, and expanding awareness of all forms of trauma, torture, and abuse. types of trauma, abuse and violence. TVA is dedicated to professionals and students and aims to collect information relevant to practice, policy and research. The literature review may be from social sciences, behavior or law.

Research Question:

- 1.the research paper aims to fulfil the gaps for protection of women from against marital rape
- 2.lack of awareness and lack of provisions for protection of women from against marital rape

Research Objective:

1. That the research paper aims to through light on the issue on the reducing number of marital rape
2. The right to have a protection for women consider as individual conscience and a conscious choice for person concerned.
3. Compare provisions of india and us in marital rape and what things we can take from them for protection of women from marital rape.

Research Methodology

This methodology adapted for the purpose of this research paper is doctrinal method involves the analysis of the statutes , case laws existing secondary information accessed from various sources such as books, articles, journals ,websites etc. this is a qualitative research .Books and research papers related to topic has been heavily replied upon as secondary sources of information .

The references has been included at the end for your kind perusal

Critical analysis

Definition of marital rape

The term marital rape (also referred to as spousal rape) refers to the involuntary intercourse between a man and his wife, which occurs by force, threat of force or abuse, physical and psychological violence, or when she is unable to give consent. It includes all forms of penetration (whether anal, vaginal or oral) that occurs against the woman's will or without her consent.

Failure to recognize marital rape contributes to the invisibility of the trauma and the mental, physical, sexual, and reproductive health consequences they experience.

Domestic violence is not a crime in India and anyone is allowed to force sex with their wife and the law

itself says so. It's funny when people across the country talk about how to keep women safe on the streets, in malls and anywhere else except at home. But crimes against women in their homes cannot and should not be ignored. The Domestic Violence Act of 2005 failed to include marital violence in its scope, although it introduced measures to protect women at home and became a useful resource for some female victims. The United Nations Population Fund reports that more than two-thirds of married women between the ages of 15 and 20 have been subjected to crimes such as forced sex, torture, and assault, along with gender-based violence.

Many countries, as mentioned above, have criminalized domestic violence, leaving aside the relationship between men and women. But not so in India. In India, marriage itself is called consent for post-marital sex, and the most important thing that differentiates forced sex is consent itself.

The thing to note is that marriage allows consent to have sex, but does not take away the woman's right to say no. Denial of this right protects the husband from taking advantage of his wife's unauthorized and unwanted sexual relations. In the specific Indian context, sexual relations between a man and his wife under the age of 15 are not rape under Sec. 375 IPC. Domestic violence is an exception to the Domestic Violence Act 2005, so women cannot receive any treatment on this basis. One of the most frightening facts is that the number of victims of domestic violence is increasing day by day and law enforcement agencies are acting unconsciously in not criminalizing such crimes.

There is a misconception that women abuse women, cause great stress, harm themselves, rape, make false accusations. should not be accused of crime. In general, no woman wants to kill her dignity, and prosecuting the victim will also affect their reputation. In the case of **Saretha T. Venkata v. Subbaihun**² defined, the rights and obligations of marriage are not terms of a personal contract between two people, but something like the creation and dissolution of something else. Because of this, there is no punishment for domestic violence, and therefore no remedy for it. Women are considered the property of their husbands and are told that they have no rights in marriage other than to satisfy their husband's sexual desires.

Indian Penal Code Section 1860 Section 375: Exception 2 of IPC 1860 states that "sexual intercourse/rape by a man with his own wife below the age of fifteen years shall not be forced". . This article excludes and limits the rights of married women.

Judicial decision and legislation on marital rape

There are no legislation for the crime of marital rape and it is not even considered as illegal in India. The present legal provisions are as under

Domestic Violence Act, 2005³: The Domestic Violence Act, 2005 deals extensively with sexual violence. Domestic violence is called domestic violence, assault, domestic violence or between legal spouses. It can be seen by men and women and includes various challenges, including physical violence,

² AIR 1983 AP 356 Saretha T. Venkata v. Subbaihun on 1 July, 1983

³ Domestic Violence Act, 2005 bare act universal publication 2021 edition

sexual violence, emotional violence, and economic violence that can lead to social inequality. In the case of domestic violence, it only means sexual violence, not rape, and the husband will have the right to remarry. The reason why we need a separate law is that domestic violence is not recognized as a crime because of family violence because it is limited to domestic violence.

Adalat Verma Committee Report⁴: The Adalat Verma Committee was set up to recommend amendments to the Penal Code to ensure faster investigations and stricter punishments for perpetrators of sexual violence against women. The council submitted its report on January 23, 2013. It was created to reform and limit rape laws. The Criminal Law Amendment Act, 2015 is an outcome of the JS Verma Committee Report. The Council stated that the idea of marriage is not different and that the nature of violence cannot be different depending on the state of the relationship. For comparison, we look at jurisdictions that criminalize domestic violence, such as the United States, Canada, Australia and South Africa.

The relationship between sentencing and punishment is also debated, with domestic violence considered a more serious crime and should be given a minimum sentence. This more complete and relevant introduction to domestic violence is one of the main contributions to distinguishing sexual and gender-based violence. However, this extreme form of gender-based violence against women is not addressed in this report.

On May 9, 2023, the Supreme Court of India will hear an appeal on the constitutionality of the "marital rape exemption". As of 2019, 150 countries have criminalized rape, but the Indian Penal Code (IPC) only applies to rape in cases of "non-consensual relations with a wife between the ages of 12 and 15". In the absence of an exception, the IPC (Section 375) states that "a man shall not be forced to have intercourse with his wife, who is under fifteen years of age."

However, in 2017 the Supreme Court in *Independent Thought v. Union of India*⁵ and in 2022 the Supreme Court in *RIT Foundation v. Union of India*⁶ held that part of Exception 2 to Section 375, which condoned marital rape of minors aged 15-18, was unconstitutional, which means that the term of 15 years in the exception must now be read as 18 years. There are currently no criminal penalties for marital rape when the wife is over 18 years of age.

Challenging the exception

This law is based on the ancient patriarchal notion that a woman is the property of her husband, and by marrying a woman gives her irrevocable lifelong consent for sexual relations with her husband of choice. This leaves women in a vulnerable position in marriage, allowing them to coerce their wives through intimidation, threats, coercion and other challenges. In the absence of laws protecting women from domestic violence, women who are forced into non-consensual sex with their husbands have no remedy or legal remedy.

⁴ Adalat Verma Committee Report 2013

⁵[2017] 10 SCC 800, AIR 2017 SC 4904 *Independent Thought v. Union of India*

⁶(2022 SCC Online Del 1404) *RIT Foundation vs Union of India*

The apex court also asked the Indian government to respond to its stand on whether sex between a man and his wife should be punished.

The incident comes after a separate decision by the Delhi High Court in 2022 to prosecute or punish husbands for non-consensual sex with their wives. In the context of the judgement, Justice Rajiv Shakder supported the amendment of the penal code of colonial India and said "it is unfortunate if the plea of married women for justice is not answered". He further said that "the right to withdraw consent at any time is the core of a woman's right to life and liberty, which includes the right to protect her physical and mental condition."

The data is distressing

Lack of legal protection against domestic violence is a women's rights issue for India as the National Family Health Survey (NFHS) estimates the percentage of prevalence of third (2005-06) and fourth (2015-16) stages. Phase 5 of the survey, conducted in 2019-2020 and covering nearly 637,000 households in 707 districts in 28 states and eight unions, found that 1 in 3 women aged 18-49 in India experience domestic violence. -6% of women reported sexual violence. The results of the NFHS study found a strong correlation between sexual and physical violence, so domestic sexual violence is included in the list of spousal violence. The results showed that 5.6% of married women had sex with their husbands, 2.7% of women had sex against their will, and 3.7% of women were forced to have sex. engaging in sexual activity against one's will with the threat of physical violence.

Marital rape in United States

A brief legal history of domestic violence is offered, followed by a discussion of the prevalence of marital violence, including the social characteristics of survivors, types of domestic violence, and risk factors for domestic violence. The impact of domestic violence is examined and the interventions of practitioners and survivors of domestic violence are examined. Although rape is a serious and widespread form of violence against women, it is now condemned by most societies. Even today, 50 percent of male students do not believe that men can rape their wives.

On July 5, 1993, domestic violence became a crime in all 50 states, and as of May 2005, 20 states and the District of Columbia have no impunity for spousal rape. Although marital abuse has been found to occur in all ages, genders, social classes, and geographic locations, studies show that two-thirds of domestic violence survivors were first abused by their spouse before the age of 25. Risk factors for domestic violence include a history of domestic violence, pregnancy, and try to leave an abusive relationship.

Background

The ideas that contributed to the non-application of rape laws to marriage can be traced, at least in part, to 17th century English common law, which was brought to the British American colonies. The 17th-century English jurist Sir Matthew Hale (1609–1676)⁷ stated in his *History of the Common Pleas* (posthumous, 1736) that "a husband cannot be guilty of rape by himself." law to his wife, because by

⁷ *History of the Common Pleas* (posthumous)

mutual marriage and contract he gave his wife to his husband in such a way that he could not take her back ". This judgment, although not found earlier than Hale, may have been based on previous standards. For example, in the case of Lord Audley (1488–1544), He mentions the jurist Bracton (c. 1210–1268) ⁸who supports this rule from the Law of the Kings of Helstan (r. 927–939). The law "is a feast of chastity, not chastity, but it may hurt the heart : but said that it is a capillary. "good request". It was accepted as a legal expression in England and Wales until it was overturned. by the House of Lords in *Sunda v Sunda* in 1991, and has been described as an anachronistic and offensive legal fiction.

1970s: change begins

In the United States, domestic violence was exempt from ordinary rape laws until the mid-1970s. This exemption is also contained in the 1962 Model Penal Code, which states, "A man who has intercourse with a woman other than his wife is guilty of rape".

Michigan and Delaware reduced their legal tolerance for domestic violence in 1974, but did not completely eliminate the spousal norm in rape laws. Michigan only criminalizes domestic violence when a couple files for divorce and lives apart. Delaware criminalized "intimate social partner" rape, which may include a wife; This crime is considered more serious than other forms of rape.

Grace Mickelson quietly suppressed the spousal exemption from state law. It was restored before long. South Dakota is the first state to ban same-sex marriage, according to the New York Times.

Nebraska also eliminated the spousal exemption in 1975. The state has since modernized its statute to use the term "rape" instead of "rape" and become gender neutral, with male perpetrators and female victims. The law change was the result of advocacy by second-wave feminist organizations and victim advocacy groups in Nebraska and was introduced to the legislature by Senator Wally Barnett.

Some laws dating back to the 1970s required couples to no longer live together on charges of domestic violence. The first case in the United States to challenge this residency requirement was *Rideout v. Oregon* in 1978.⁹ In this case, the husband was accused of raping his wife. they still live together. This court was the first to deal with domestic violence in Oregon, and after revising the state's rape statute in 1977, it eliminated domestic violence immunity. Although the husband was released from the rape of his wife, this spurred reform; Many American states have begun to allow prosecutions for forced marriage and cohabitation.

Laws change in all states by 1993

In some states, courts have limited the marriage exemption, finding it unconstitutional. In the 1984 New York Court of Appeals case "A marriage certificate should not be viewed as permission for a husband to coerce his innocent wife" Judge Sol Wachtler¹⁰ wrote in *Liberta. said. Control your body*".

Similarly, in Alabama, marriage was exempt from sodomy law (*Williams v. State* (1986)) and the rape law (*Merton v. State* (1986)) were ruled unconstitutional. In 1993, all states revoked marriage exemptions; The last states to do so were Oklahoma and North Carolina (both in 1993) or exemptions ended illegal sentences.

⁸ rule from the Law of the Kings of Helstan

⁹ Marion County Circuit Court in 1978 in Salem

Although all state laws have changed since 1993, only 17 states treat marital rape the same as extramarital rape. In other states, significant differences still exist between married and unmarried torture victims, such as reduced sentences, non-violent separation, or significantly shorter reporting periods.

Statistics on marital rape in United States

1. Intimate partner violence affects people of all genders, races, ethnicities, and health conditions. Sexual violence can be experienced and committed by people of all genders.
2. According to a 2014 Trusted Source report, approximately 19.3% of women and 1.7% of men in the United States have been abused in their lifetime.
3. Approximately 45.4 percent of women and 20 percent of men have a relationship with rape perpetrators, participants, or facilitators.
4. Overall, 8.8% of women and 0.5% of men have been victims of sexual partner rape. Of the women who were raped by an intimate partner, 11.4% were racialized, 9.6% , non-Hispanic black, and 6.2% were Hispanic.
5. Approximately 71.1% of women and 58.2% of men had a relationship with a violent partner before the age of 25.

Comparison of marital rape in India and the USA

1. In the United States on December 2, 1979. Laws in each of the 50 states vary in content, pattern, and application and currently treat unmarried and married persons equally. Whereas In India, a bill was presented to the parliament but was not implemented. Members have repeatedly withdrawn this bill on the grounds that it is unfair, stating that these laws should not be passed to protect the sanctity of marriage. The government itself does not support it and its only hope is in the judicial system. The JS Verma committee in its report claimed that the marriage was illegal but not yet legal.
2. The husband takes advantage of his wife and exploits her in the name of culture and tradition. Whereas in united states there has been proper punishment will be given to person who takes advantage of his wife and exploits her in the name of culture and tradition.
3. It was revealed that 98% of the people in India believe that adultery is not a crime, but we do not have any laws .It is ground of divorce in marriage whereas in us adultery is an offence as per their penal code of us .
4. In India, it is the wife's responsibility to protect herself from harming her husband's pleasure. The consequences are the most severe; for example, women's physical injuries, including genital injuries and health problems, sexually transmitted diseases, miscarriages, HIV, etc. Bone injuries, broken bones and swelling can occur in women due to domestic violence. It also has psychological consequences such as hopelessness, panic, depression, and some women are driven to suicide but now Indian penal codes give severe punishments to punish them. Whereas in united states highly rules and regulation has been followed to protect their rights of women.
5. In india follow of rules and regulations are no rigid in nature in legislature related to marital rape of women's whereas in USA follows rigid nature of rules and regulations related to marital rape

Conclusion

Conjugal Assault is the foremost brutal wrongdoing against the ladies, in which the body of ladies is considered as property by their spouse and is abused as per their husband's choice. It has as of now been criminalized in numerous nations of the world by disregarding the current relationship among spouse and wife, and centering on the foremost vital angle which makes assault diverse from sexual intercut, i.e. assent.

Conjugal Assault in spite of the fact that having all basic conditions couldn't be respected as a wrongdoing as here the relationship is given more esteem than human nobility, brutal nature, and indeed laws. As no law exists in India which seem deny conjugal assault being a wrongdoing legitimately. But just like the display case where it is numbered as an exemption indeed being violative of principal rights given beneath Article 14 and 21 of the Indian Structure.

The Condition of ladies is degrading day by day together with the increase within the number of cases of wrongdoing done against them. In these violations, there's no record of violations such as conjugal assault on which any ladies can't indeed inquire for a cure. Fair what she can do is to endure and get utilized by their spouse. Indeed not a single judgment was given on protection, nobility, or so exempts hitched ladies from it. But wrongdoings such as conjugal assault damage each one of those.

Recommendation

A woman is not considered the husband of property. In most modern societies, marriage is based on mutual respect and equality between partners, and the idea of treating a partner as property is unacceptable. In fact, many people think this idea is outdated and harmful. It is important to remember that everyone, whether male or female, deserves respect and dignity.

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